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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

REBECCA RICKLEY, et al.,

Plaintiffs and Appellants,

v.

MARVIN GOODFRIEND,

Defendant and Respondent.

B238965

(Los Angeles County
Super. Ct. No. SC081696)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Cesar Sarmiento, Judge. Reversed and remanded.

Natasha Roit, in pro. per., and for Plaintiffs and Appellants.

Jeffer, Mangels, Butler & Mitchell, Mark S. Adams, Kenneth A. Ehrlich
and Elizabeth A. Culley for Defendant and Respondent.

Plaintiffs and appellants Rebecca Rickley and Natasha Roit (collectively referred to as appellants) appeal from an order denying attorneys fees. We recently addressed the same issue in a related appeal, *Rickley v. Goodfriend* (2012) 207 Cal.App.4th 1528 (*Rickley I.*). We reverse and remand.

FACTUAL & PROCEDURAL BACKGROUND

Appellants own a home in Malibu, next to a home owned by respondent Marvin Goodfriend (respondent) and his wife Tina Fasbender Goodfriend (Fasbender). Appellant Roit is an attorney. Appellants, represented by Roit, brought two actions against respondent and others for acts incurred during a remodel of respondent's property. In the first action (case No. SC081696, the First Action), appellants alleged that respondent, Fasbender, and Shahriar Yazdani performed an unpermitted remodel and dumped the construction debris and trash onto their and appellants' hillsides, in a landslide-sensitive area. In the second action (case No. SC098072, the Second Action), filed against respondent and Fasbender, appellants alleged a nuisance and violation of CC&Rs by the encroachment of foliage and fencing. Appellants obtained judgments in both cases,¹ and when the defendants in those cases failed to comply, appellants obtained orders to show cause for contempt.

The First Action

In the First Action, respondent pled guilty to all five contempt charges brought against him and he was fined \$4,000. On November 8, 2011, appellants filed a motion for attorney fees pursuant to Code of Civil Procedure section 1218.² Appellant Roit, who is an attorney, requested fees for 33.73 hours at the rate of \$450 for a total of

¹ In the First Action, appellants obtained judgments against Goodfriend, Fasbender and Yazdani.

² Code of Civil Procedure section 1218, subdivision (a) provides in pertinent part: "[A] person who is subject to a court order as a party to the action, or any agent of this person, who is adjudged guilty of contempt for violating that court order may be ordered to pay to the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by this party in connection with the contempt proceeding."

\$15,178.50.³ The trial court issued a ruling on December 5, 2011, denying the request for fees on three grounds: (1) section 1218 provides that such an award is discretionary, (2) an attorney who represents himself or herself in propria person is not entitled to recover attorney's fees, citing *Trope v. Katz* (1995) 11 Cal.4th 274 and (3) appellants had not incurred any fees, citing *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44.

Appellants filed a notice of appeal in February 2012.

The Second Action

In the second action, in an order entered in May 2011, the trial court awarded fees which appellant requested on behalf of an attorney associated in for purposes of the contempt proceeding, but denied the bulk of the fees requested, which was for Roit's time. In July 2011, appellants filed an appeal from that order. On July 30, 2012, we issued an opinion in *Rickley I*, reversing the trial court's order and remanding for a further determination of whether an attorney-client relationship existed between Roit as an attorney and Roit and Rickley as homeowners. (*Rickley I, supra*, 207 Cal.App.4th at pp. 1538-1539.)

DISCUSSION

This appeal is from the denial of fees in the First Action.

As we discussed in *Rickley I*, the previous appeal, this case does not involve the enforcement of a contract as in *Trope v. Katz* (1995) 11 Cal.4th 274, but instead involves the quasi-criminal process of a contempt citation. The purpose of the applicable statute authorizing an award of attorney fees, Code of Civil Procedure section 1218, is to encourage parties to enforce contempt violations and to encourage parties to comply with court orders. (*Rickley I, supra*, 207 Cal.App.4th at pp. 1533, 1537.)

The dispositive factor in awarding fees is not whether Rickley and Roit were liable for or obligated to pay fees, but whether there was an attorney-client relationship between

³ Roit had previously requested and received fees for contempt proceedings against Yazdani.

Roit as an attorney and Roit and her spouse Rickley as homeowners. (*Lolley v. Campbell* (2002) 28 Cal.4th 367, 374-375, *Musaelian v. Adams* (2009) 45 Cal.4th 512, 520 and *Healdsburg Citizens for Sustainable Solutions v. City of Healdsburg* (2012) 206 Cal.App.4th 988, 995-997.) Since the trial court did not make a determination of whether such a relationship existed, we remand the matter to the trial court for such a determination.

DISPOSITION

The judgment (order denying motion for fees) is reversed and matter is remanded to the trial court for a determination of whether there was an attorney-client relationship between Rickley and Roit. If such a relationship existed, then the trial court should reconsider whether Roit should be awarded fees and if so how much.

Appellants shall recover their costs on appeal.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.